

MAR-26-2010 FRI 01:24 PM C.R. MILES P.C.

FAX NO. 970 492 0003

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Telephone: 970-492-0000. Facsimile: 970-492-0003 E-mail: crmiles@crmiles.com

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Date: March 26, 2010

From: Craig Miles, Esq.
CR MILES, PC

To: United States Patent and Trademark Office

Facsimile No: 571-273-8300

Telephone No: 800-786-9199

Pages transmitted including cover sheet Facsimile Only

Re: Appl. No. 10/523,268
Filing Date: July 7, 2005
Atty Docket No. XY-lowPressure-USNP

MESSAGE:

Dear Sir/Madam:

Per communication from the Office of Petitions mailed March 24, 2010, we are requesting a refund of the extension of time fee in the amount of \$1,110.00 for the above-identified patent application. We are requesting this refund for the reason that the Petitioner paid this extension of time fee along with a Petition to Revive on January 5, 2010 which was subsequent to the maximum extendable period to reply thus resulting of an overpayment in the amount of the \$1,110.00 for the extension of time fee. A copy of the Decision of the Office of Petitions mailed March 24, 2010 is enclosed.

Please refund this overpayment in the form of a check addressed to CR MILES, P.C., 405 Mason Court, Suite 119, Fort Collins, Colorado 80524. Thank you for your attention on the matter and please file this request as soon as possible. If you should have any questions, please contact our office.

Sincerely,
CR MILES, P.C.


Craig R. Miles, Esq.



UNITED STATES PATENT AND TRADEMARK OFFICE

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Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
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MAR 24 2010

OFFICE OF PETITIONS

CR MILES P.C.
405 MASON COURT, SUITE 119
FORT COLLINS 80524

In re Application of
John L. SCHENK, et al
Application No. 10/523,268
Filed: July 7, 2005
Attorney Docket No. XY-LOWPRESSURE-
USNP

ON PETITION

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 5, 2010, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of April 29, 2009. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). *See* MPEP 711.03(c)(III)(A)(2). A three (3) month extension of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is July 30, 2009.

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE) and fee of \$810, and the submission required by 37 CFR 1.114; (2) the petition fee of \$1620; and (3) the required statement of unintentional delay have been received.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See* In re Application of S., 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1110 extension of time fee submitted with the petition on January 5, 2010, was subsequent to the maximum extendable period for reply, petitioner may request a refund of this fee by writing to the following address: Mail Stop 16, Commissioner for Patents, P. O. Box

Electronic Patent Application Fee Transmittal

Application Number:	10523268					
Filing Date:	07-Jul-2005					
<p>Adjustment date: 04/14/2010 SDIRETA1 01/06/2010 INTEFSW 00003768 10523268 02 FC:1253 -1110.00 0P</p>						
Title of Invention:	Low pressure sperm cell separation system					
First Named Inventor/Applicant Name:	John L Schenk					
Filer:	Cindee R. Ewell/Ryan Christensen					
Attorney Docket Number:	XY-lowPressure-USNP					
Filed as Large Entity						
U.S. National Stage under 35 USC 371 Filing Fees						
Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)		
Basic Filing:						
Pages:						
Claims:						
Miscellaneous-Filing:						
Petition:						
Petition-revive unintent. abandoned appl	00300082416	\$1110.00	1453	1	1620	1620
Patent-Appeals-and-Interference:						
Post-Allowance-and-Post-Issuance:						
Extension-of-Time:						
Refund Ref#	04/14/2010	Refund Card	Refund Total:	XXXXXX6318	VISA.....	

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Extension - 3 months with \$0 paid	1253	1	1110	1110
Miscellaneous:				
Request for continued examination	1801	1	810	810
Total in USD (\$)				3540

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Application No. 10/523,26[]

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1450, Alexandria, VA 22313-1450. A copy of this decision should accompany petitioner's request.

It is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue. Nevertheless, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

There is no indication that the person signing the petition was ever given a power of attorney to prosecute the application. If the person signing the petition desires to receive future correspondence regarding this application, the appropriate power of attorney document must be submitted. While a courtesy copy of this decision is being mailed to the person signing the petition, all future correspondence will be directed to the address currently of record until appropriate instructions are received.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-6735.

This application is being referred to Technology Center AU 1632 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

/DCG/

Diane C. Goodwyn
Petitions Examiner
Office of Petitions

cc: RYAN CHRISTENSEN
XY, INC.
22575 STATE HIGHWAY 6 SOUTH
NAVASOTA, TX 77868